

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JESSE FLYING OUT)	
Claimant)	
VS.)	
)	
FRANCIS TRUCKING COMPANY)	Docket No. 216,630
Respondent)	
AND)	
)	
WAUSAU INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent requested Appeals Board review of the September 11, 1997, Award entered by Administrative Law Judge Nelsonna Potts Barnes.

APPEARANCES

Claimant appeared by his attorney, Joseph Seiwert of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Douglas C. Hobbs of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the Administrative Law Judge's Award.

ISSUES

The single issue for review by the Appeals Board is the nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs of the parties, the Appeals Board finds as follows:

Claimant was injured as he was loading cattle onto a truck while employed by the respondent on December 4, 1995. Claimant alleges, as a result of that accident, he suffered permanent injury to his right knee, right great toe, and midback. Claimant claims he is entitled to permanent partial general disability benefits based on a whole body permanent functional impairment rating. See K.S.A. 44-510e. Respondent, on the other hand, contends claimant's permanent partial general disability benefits are limited to claimant's right lower extremity, a scheduled injury, as provided for in K.S.A. 44-510d(a)(16). Respondent argues if claimant suffered an injury to his midback as a result of the December 4, 1995, work-related accident, such injury has resolved and, therefore, the injury was temporary and not permanent.

The Administrative Law Judge awarded claimant permanent partial disability benefits based on a 10 percent permanent functional impairment rating to the body as a whole. The Administrative Law Judge found claimant had met his burden of proving a general body disability through claimant's testimony and the testimony of Lawrence R. Blaty, M.D.

The Appeals Board agrees with the Administrative Law Judge that the record supports the conclusion, that claimant suffered permanent injuries to not only his right knee and right great toe but also to his midback as a result of the December 4, 1995, work-related accident. Thus, the Appeals Board affirms the Administrative Law Judge's Award.

The Appeals Board finds that the Administrative Law Judge's findings of fact and conclusions of law set out in her Award are accurate. The Appeals Board concludes there is no reason to restate those findings and conclusions in this order. Therefore, those findings and conclusions are adopted by the Appeals Board as its own.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes dated September 11, 1997, should be, and is hereby, affirmed.

The Appeals Board approves and adopts all remaining orders contained in the Award.

IT IS SO ORDERED.

Dated this ____ day of December 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director